Supreme Court, U.S.
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MICHAEL RODAK, JR., CL

IN THE

Supreme Court of the United States

October Term, 1978

No. 79-461

WATERBURY URBAN RENEWAL AGENCY,
Petitioner

vs.

WATERBURY ACTION TO CONSERVE OUR HERITAGE,
Respondent

MOTION OF CONNECTICUT COMMUNITY DEVELOPMENT ASSOCIATION (CCDA) FOR LEAVE TO FILE A BRIEF AS AN AMICUS CURIAE IN SUPPORT OF THE WATERBURY URBAN RENEWAL AGENCY'S PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

For the reasons set forth in the attached brief Connecticut Community Development Association (CCDA) moves for leave to file said brief as an AMICUS CURIAE pursuant to the provisions of Rule 42 (1) of the Supreme Court Rules because consent to the filing of such a brief has been denied by the Respondent.

Respectfully Submitted,

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AMICUS CURIAE BRIEF OF CONNECTICUT COMMUNITY DEVELOPMENT ASSOCIATION (CCDA) IN SUPPORT OF THE WATERBURY URBAN RENEWAL AGENCY'S PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

INTEREST OF CCDA

The Connecticut Community Development Association (CCDA) is a state-wide, non-profit association organized and existing under Connecticut law to promote the interests of urban renewal and community development agencies and officials within the State of Connecticut. Its current members include, among others, the cities or towns of Enfield, New Britain, New Haven, Norwalk, Norwich and Stamford, and individual renewal and development officials from the Connecticut Cities and towns presently undertaking 27 Urban Renewal projects approved and financed by the Federal government under Title I of the Housing Act of 1949, as amended, 42 U.S.C., Sections 1450 et. seq. (Bridgeport, Bristol, Danbury, Enfield, Glastonbury, Hartford, Middletown, New Britain, New Haven, New London, Norwalk, Norwich, Stamford, Stratford, Waterbury, West Haven, Willimantic and Windsor Locks.)

Loan and capital grant contracts for the undertaking of the foregoing 27 Urban Renewal projects were executed either in the late 1960's or early 1970's. Approximately $130,000,000 in Federal funds is involved in implementing the foregoing Urban Renewal projects, in addition to approximately $66,000,000 in State and local funds. All of the foregoing Urban Renewal projects are being undertaken in cities and towns which are desperately in need of renewal and redevelopment. All of the foregoing Urban Renewal projects are being undertaken in accordance with Urban Renewal plans which were the subject of long planning processes and mandated public hearings by both redevelopment agencies and local legislative bodies under Chapter 130 of the Connecticut General Statutes (1958 Rev.), as amended. In almost all of the foregoing Urban Renewal projects, extensive work has been carried out to date to implement such projects, including the making of legal commitments to redevelopers to demolish or rehabilitate and reuse structures, sell or lease land and construct site improvements.

CCDA's member municipalities and individual members are also responsible for the planning and implementation of

Federally financed community developments programs authorized under Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C., Sections 5301 et seq.). In many of the above communities, community development funds are being allocated to the above Urban Renewal projects because community development funds may be used for completing Urban Renewal activities. 42 U.S.C., Section 5305(a)(10). In addition, the U.S. Department of Housing and Urban Development (HUD) may require a municipality to expand up to twenty percent (20%) of a municipality's annual community development allocation to complete Urban Renewal project activities. 42 U.S.C., Section 5312.

All of the foregoing Urban Renewal projects are being undertaken in the older parts of Connecticut's older municipalities. Almost all of the municipalities and redevelopment agencies are subject to suits brought by individuals who believe that these older areas should be maintained in "as is" conditions. Two lawsuits, in addition to the case at bar, have been instituted in the United States District Court for the District of Connecticut against the Middletown Redevelopment Agency, **Committee to Save the South Green v. Hills et. al.**, Civil Action No. H-76-328 (D. Conn., Nov. 5, 1976) and the New Haven Redevelopment Agency, **Committee to Save City Hall v. Harriss (SIC) et. al.**, Civil Action No. 77-300 (D. Conn., Aug. 15, 1977) to enjoin the implementation of two of the 27 Urban Renewal Projects described above, on essentially the same grounds as are present in the case at bar. The attorney for Respondent Waterbury Action to Conserve Our Heritage (WATCH) represented the plaintiffs in each of the aforementioned cases. Facts regarding the institution of those two actions together with the instant case have been widely reported in the press throughout the State of Connecticut.

ARGUMENT

Given the pattern to date, CCDA believes that the interests of its member municipalities and officials to carry out much needed Urban Renewal projects are threatened by the portion of the holding of the United States Court of Appeals for the Second Circuit stating that procedures mandated under Section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C., Section 470f, (NHPA) continue to apply to an Urban Renewal project after execution of a loan and capital grant contract so long as the U.S. Department of Housing and Urban Development (HUD) retains authority to make funding approvals pursuant to a loan and capital grant contract. **Watch v. Harris et al.**, Docket Nos. 79-7030, 79-7100, (2d Cir., June 25, 1979) in the following respects:

1. Imposing upon CCDA's members, as well as HUD, the adminisratively impossible task of determining whether activities undertaken pursuant to an approved Urban Renewal Plan and loan and capital grant contract will have an effect upon any district, site, building, structure or object which may be eligible for inclusion in the National Register, or endangering Urban Renewal plans, to accommodate recently designated National Register districts, sites, buildings, structures or objects in order to comply with requirements imposed under 16 U.S.C., Section 1470f.

2. Forcing CCDA's members to delay implementing activities, including the carrying out of commitments to private redevelopers, authorized under an approved Urban Renewal plan and loan and capital grant contract until, if at all, a clear determination can be made that such activities will have no effect upon any district, site, building, structure or object which may be eligible for inclusion in the National Register.

3. Causing severe financial losses to Connecticut's cities and towns by potentially delaying the implementation of activities authorized under an approved Urban Renewal Plan

and loan and capital grant contract until inflation causes the cost of implementing those activities to exceed the amounts budgeted for those activities, without recourse to HUD for addiional funds due to the phasing out of the Urban Renewal program in 1974;

4. Discouraging potential investors from investing in Urban Renewal areas in Connecticut's cities and towns due to doubts about the abilities of municipalities, redevelopment agencies and municipal officials to implement authorized activities under legally approved Urban Renewal plans and loan and capital grant contracts.

5. Granting to small groups of self-appointed individuals and the Advisory Council on Historic Preservation superior rights to determine municipal development strategies beyond the powers of citizens in general by giving to such self-appointed individuals and the Advisory Council the power to stop at any time the implementation of Urban Renewal plans, which have been approved by locally elected and appointed officials, as well as HUD and agencies of the State of Connecticut, because of alleged impacts on "newly discovered" historic districts, sites, buildings, structures or objects.

Respondent argues that it makes no practical difference if the decision of the Court of Appeals for the Second Circuit is allowed to stand because the provisions of Section 102 of the National Environmental Policies Act of 1969, 42 U.S.C., Section 4332 (NEPA), will continue to apply. However, as shown above, the provisions of NHPA add an infinitely more complex and difficult regulatory process to the already difficult and complex regulatory process established under NEPA. In the first place, under NEPA, the Federal funding agency, HUD, is also the Federal agency which makes the determinations under NEPA. Therefore, local officials, including CCDA's members, can deal with one Federal agency which has the whole picture before it. NHPA, on the other hand, turns the regulatory process over to agencies, such as the Advisory

Council on Historic Preservation, which have no programmatic responsibilities pertaining to municipal redevelopment or the economic, social and physical well-being of Connecticut's cities and towns. Secondly, NEPA is a balancing act, i.e. requiring the use of an "interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision-making which have an impact on man's environment." 42 U.S.C., Section 4332(A). NHPA, on the other hand, does not provide a balancing mechanism. Instead, it mandates certain time-consuming and difficult procedures for the purpose of serving one interest, namely historic preservation, irrespective of economic, social or physical consequences. Thirdly, NEPA procedures are required within certain specified time frames. For example, under HUD procedures, environmental assessments must be made prior to HUD approval of an Urban Renewal Plan, or an amendment thereto (HUD Handbook 1390.1), or with respect to the community development program at the time the municipality assumes responsibility for undertaking the environmental review. 42 U.S.C., Section 5304(h). NHPA, on the other hand, as interpreted by the United States Court of Appeals for the Second Circuit, has no time frames. Districts, sites, buildings, structures and objects can be declared eligible for inclusion in the National Register upon anyone's petition at any time. There are no cut-off dates or times when decisions can be made which clearly will not involve the application of NHPA. Therefore, while local officials can safely move ahead after complying with NEPA procedures, they are never immune from last minute NHPA imposed requirements.

CONCLUSION

For the foregoing reasons, CCDA respectfully requests that the Court grant WURA's petition for a Writ of Certiorari.

Respectfully Submitted

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